FOX HORAN & CAMERINI LLP

Securities and Exchange Commission
Attn: Mr. Jonathan G. Katz, Secretary
File No. S7-12-05

Subject: Proposed Rulemaking under Securities Exchange Act of 1934

Gentlemen:

We submit this letter of comments in response to the Commission's invitation in Securities Exchange Act Release No. 34-53020 for comments on its proposal to amend the rules allowing a foreign private issuer to terminate its registration of a class of securities under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") and thereby stop filing reports required as a result of registration.

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We proceed from an underlying assumption that it is in the interests of the investing public that issuers seeking to raise capital should disclose as much information to the market as feasible to enable an investor to make a prudent investment decision. Foreign private issuers, like domestic issuers, provide an opportunity to U.S. investors to invest capital, and the greater the transparency of the market, the greater the benefit to investors.

We fully concur with the objective of proposed Rule 12h-6 and the accompanying proposed amendments discussed in the Release to benefit investors to the extent that they remove a disincentive for foreign companies to register their securities with the Commission by lessening their concerns that the Exchange Act reporting system is one that is difficult to leave once a company enters it. The present 300-shareholder threshold for withdrawal from registration is no longer reasonable; it had been adopted at a time of much less global securities trading.

The passage of the Sarbanes-Oxley Act of 2002 has resulted in very substantial increases to the costs of registering securities and filing reports under the Exchange Act. These increased costs, which issuers (in particular, small issuers) did not contemplate when initially registering under the Exchange Act, have become substantial burdens to such issuers. This is especially true of small foreign private issuers which had come into the United States public capital markets because these markets had the greatest pool of readily available funds to provide to these small foreign entities. The benefit to the issuers and investors was mutual: issuers obtained capital, and investors obtained a broad new array of investments. These investments in registered companies could be made

based on sufficient data to make an informed investment decision, which in many cases was not the case for investors in the issuer's home country. The continuing compliance of these issuers with the reporting requirements of Section 13(a) of the Exchange Act helped create a thriving market for non-U.S. securities.

Although members of the Commission Staff have on occasion, at seminars and conferences, stated that many issuers went public in the 1990s which should not have, we must respectfully decline to concur in that view. We submit instead that it is better for all issuers seeking to raise funds in the U.S. capital markets to make full and fair disclosure through the registration/reporting process, and that it is not in the interests of the U.S. investing public to have to seek out private placements and other unregistered offerings or issues which have been listed on foreign exchanges with little transparency. U.S. investors will search for and find these securities. Issuers which do not file reports under Section 13(a) do not provide accessible ongoing information to either then-current investors or to potential purchasers of restricted shares acquired in unregistered offerings. Therefore, we support all efforts to encourage participation in the registration/reporting system of the Exchange Act.

Consequently, we fully concur in the Commission's stated objective to give foreign private issuers stronger incentives to enter our Exchange Act reporting regime by lowering the cost and other obstacles of exiting from that regime. Our law firm, which predominantly serves a non-U.S. client base, has had a number of instances in which small foreign private issuers have declined to explore entry into the U.S. capital markets as a public company, because of the expenses of compliance with Sarbanes-Oxley and the difficulty of extricating themselves from registration under the Exchange Act. They have cited their concern that there was not enough economic benefit for them to undertake the expense of reporting under the Exchange Act and to face the complexities of working around the existing 300-shareholder threshold, which may involve reverse stock splits and other time-consuming devices, if they want to exit Exchange Act registration in the event that their U. S. presence was not successful.

We believe the concerns one might have that making it easier for issuers to withdraw from registration are greatly satisfied by the condition set forth in the proposed 12(h)(4), which requires a deregistered issuer to become a Rule 12g3-2(b) company and continue to furnish the kind of information necessary under Rule 12g3-2(b). This enables such investors, who may choose to "hold" their securities, to avoid panic selling because future information will no longer be available. We do, however, suggest that provision be made in the proposed rule changes that such information must be filed electronically with the Commission as well as on the issuer's website. We urge that such filing be permitted by transmission in PDF format rather than on EDGAR, so that foreign private issuers not familiar with the intricacies of the EDGAR process can easily and without substantial cost publish such information.

Although we concur in the proposed condition that a foreign private issuer must have been a complying reporting company under the Exchange Act for the past two years in order to terminate its registration under Rule 12h-6, we do not believe it should be

necessary that the issuer have also maintained a listing of that class of securities on an exchange in its home country for such period. Since the interests of the U.S. investor at the time of proposed termination of registration is only forward-looking (i.e., "What happens to my investment now?") the issue of whether the company had maintained a home country listing of such securities in the past seems quite irrelevant. It is relevant, of course, whether such a listing is maintained in the future, but not in the past. In addition whether that home country constituted the issuer's primary trading market in the prior two years does not appear to us as a matter of concern for the holding investors. Of far greater consequence will be the issue of what happens next. We suggest that the Commission consider modifying this condition to focus on the obligation to maintain a market for the securities for a period of time in the future, perhaps twelve months. This would complement the proposed requirement of furnishing current information to the Commission as proposed in the Release.

We concur in the Commission's proposed notice requirement that a foreign private issuer disclose its intent to terminate its registration and reporting obligation beforehand. Termination is clearly a material event to the investor. Parenthetically, we note the statistical evidence offered in past studies that companies ceasing to furnish reports under the Exchange Act (sometime referred to as "going dark") customarily suffer material decreases in their securities prices. Because of that materiality, we believe that such notice be furnished by mail to every shareholder of record with instructions to forward such notice to ultimate beneficial owners, as well as being filed with the Commission under cover of a Form 6-K or as an exhibit to Form 15-F as proposed in the Release. The mailing to a beneficial holder of such a notice will more likely alert him to this material event than his indirectly learning of it through a filing with the Commission, which may not be noted by the media because of the insignificance of the small foreign private issuer.

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We appreciate this opportunity to comment on the Commission's proposal and would be pleased to discuss any questions or comments the Commission may have with respect to this letter.

Very truly yours,

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